reporting requirement that orders held must be reported to the CPUC if the order is not provisioned within 15 days of the mutually agreed upon date. For orders held more than 45 days, the incumbent LEC must refund all nonrecurring charges associated with the interconnection request.

8. Any National Policy Should Accommodate the CPUC's Preferred Outcomes Approach.

The FCC requests comment on which state interconnection policies can serve as a national standard. NPRM, ¶65. The CPUC offers its "preferred outcomes" as one approach that is consistent with the 1996 Act, and should serve as one possible model. In the preferred outcomes approach, carriers are free to negotiate any arrangement which is not anticompetitive or contrary to the public interest. If parties are unable to reach agreement, an expedited dispute resolution process is available. In the event a formal ruling is required, the Administrative Law Judge (ALJ) will use the "preferred outcomes" as guidance for resolving disagreements.

The CPUC will describe the interconnection policy adopted in Decisions 95-07-054 and 95-12-056. (A copy of relevant sections of D.95-12-056 is appended as Attachment 2 to these Comments.) The key features of the interconnection arrangements adopted in these orders are interim bill and keep for recovery of call termination costs, and a "preferred outcome" negotiated contract arrangement for interconnection agreements. These rules apply to all facilities-based CLCs. In addition, interconnection agreements for CLCs can take place outside of this framework.

The CPUC has opted to allow LECs and CLCs to negotiate interconnection contracts under CPUC guidelines rather than to tariff interconnection arrangements. The CPUC arrived at this conclusion after weighing many of the issues the Commission is considering, such as the early imbalance of negotiating power between LECs and competitors, the need to protect against discriminatory practices, the need for flexibility and the desire to accommodate rapid technological change.[11] The principal reason for the choice of negotiated contracts was to allow greater flexibility in interconnection agreements, and to avoid lengthy deliberation over interconnection tariffs. The CPUC expects contracts to lead to more efficient use of interconnection facilities and to allow more rapid deployment of new technologies. Most importantly, the CPUC's negotiated interconnection agreement approach is consistent with section 252 of the 1996 Act.

To neutralize imbalance in negotiating power, expedite the agreement process and to protect against discriminatory practices, the CPUC has specified "preferred outcomes" and established an expedited contract approval and dispute resolution process. The preferred outcomes represent the technical features that are expected to lead to the most efficient and economic interconnection agreements. An example of one of these preferred

11. FCC 95-505, ¶¶ 88-93.

outcomes is two-way trunking.[12] The CPUC chose two-way trunking as a preferred outcome because this arrangement is expected to be more efficient for CLCs during the start-up period, and more flexible. These preferred outcomes are not meant to exclude other mutually agreeable arrangements. If parties agree to other arrangements, these will be approved using the same expedited process. Major departures from the preferred outcomes will be reviewed on a standard, non-expedited basis.

Interconnection agreements must be filed with and approved by the CPUC. The CPUC staff reviews these agreements to ensure that they are not unduly discriminatory or anticompetitive. Parties have seven days to protest agreements solely on the grounds that they are discriminatory or anticompetitive. Contracts will go into effect in 14 days, unless the CPUC finds them unduly discriminatory or anticompetitive. If parties include other intercarrier arrangements beyond the scope of interconnection, they will not be handled on an expedited basis. The Commission has also established an expedited dispute resolution process to ensure that parties negotiate promptly and in good faith.

California also allows interconnection agreements outside of the framework described above. One example is an agreement between Pacific Bell and Metropolitan Fiber Systems ("MFS") which has been approved by the CPUC subject to certain amendments. The

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12. D.95-12-056, p. 26. A complete list of preferred outcomes is contained in Appendix A of D.95-12-056.

Commission noted the Pacific Bell-MFS agreement's reciprocal call termination rate of 0.75 cents per minute.[13] In addition to interconnection arrangements, the Pacific Bell-MFS agreement includes provisions beyond the scope of the network interconnection arrangements covered by D.95-12-056, such as access to unbundled links.

B. **Collocation**

1. **A National Standard for Collocation May Be Appropriate.**

The 1996 Act requires incumbent local exchange carriers to provide physical collocation for interconnection or access to unbundled elements unless the carrier can demonstrate to the state commission that physical collocation is not practical for technical reasons or because of space limitations.[14] The FCC proposes that issuing national standards would facilitate entry by competitors. NPRM, ¶67. California agrees with the Commission's tentative conclusion that national standards would be helpful to implement the collocation requirements of the 1996 Act. These standards would assist states in determining when virtual collocation should be authorized.

In D.95-04-073, California adopted collocation rules patterned after the Commission's own collocation rules, as modified by the D.C. Circuit Court in Bell Atlantic v. FCC, 24

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13. FCC 95-505, ¶ 71.

14. Telecommunications Act of 1996, Section 251(c)(6).

F.3d 1441 (D.C.Cir. 1994).[15] The CPUC adopted these rules after it investigated other alternatives for collocation in its state proceeding and concluded that the federal structure that allowed for both virtual and physical collocation aided in the development of California's competitive telecommunications policy. California notes that it has not had a collocation complaint case before it since the adoption of its collocation rules. The CPUC recommends that the FCC retain its current collocation policies and allow these policies to serve as a national standard.

C. **Unbundled Elements**

The CPUC is currently working on unbundling issues and will limit its comments on this section of the NPRM. The CPUC began its unbundling proceeding in 1993 and so far has restructured the access market and allowed for switched transport competition. Right now, the CPUC is focusing on unbundling network functions. Staff is currently reviewing total service long run incremental cost ("TSLRIC") studies. The CPUC will have hearings this summer to determine the prices for the unbundled elements.

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15. The CPUC declined to depart from the FCC's standards, stating that "[b]ecause we agree with the FCC's conclusion in the July 14 order that virtual collocation is likely to confer almost all of the same benefits as physical collocation..., and since we think we have ample authority under California law to order virtual collocation, we will do so." (D.95-04-073, p. 13)

1. **The FCC Should Consider the Elements the CPUC Is Examining for Unbundling.**

The FCC tentatively concludes that it should establish a minimum set of network elements that incumbent LECs must unbundle for any requesting telecommunications carrier. NPRM, ¶77. The CPUC is in the process of establishing a set of elements and is considering unbundling eight basic network functions. These are: 1) loops, 2) ports, 3) signal links, 4) signal transfer points, 5) service control points, 6) entrance facility, 7) direct-trunked transport, and 8) tandem-switched transport. The CPUC suggests that the FCC consider the elements the CPUC is examining in its unbundling proceeding. The CPUC agrees with the FCC's tentative conclusion that states may require additional unbundling of network elements, and may exercise this option if the FCC does not unbundle all of the elements that the CPUC is considering.

2. **The FCC Does Not Need to Adopt Minimum Standards for the Provisioning of Unbundled Elements.**

The FCC seeks comment on whether it should establish terms and conditions for the provisioning of unbundling. NPRM, ¶77. While many technical standards could be set based on the fact that equipment manufacturers have sold equipment with little regional variation, the CPUC notes that de facto standards have been established by incumbent LECs and interexchange carriers (IXCs) through consensus. Therefore, the market has already arrived at solutions to many of these technical problems. The need for the FCC to establish minimum technical standards is not clear or pressing, and may prematurely hinder innovation and efficiency.

While equipment design may display little regional variation, the provisioning systems of LECs vary considerably by company and by region. As the CPUC is discovering in its unbundling proceeding, rules from other regions do not always mirror how LECs in California may operate their networks. Even within California, the two largest incumbents display significant differences in how they provision and operate their networks. The CPUC believes that states are best situated to determine the terms and conditions for unbundled network elements appropriate to the unique circumstances faced in their respective jurisdictions.

The CPUC does not believe that a lack of national standards will hamper the CPUC's ability to establish terms and conditions for the unbundled elements in the prescribed timeframe. In fact, the result may be quite the opposite. While new entrants plan to configure national networks, most realize that incumbent LEC networks reflect the specific operating history of the LEC and varying geographic conditions.

When evaluating an RBOC's compliance with 271, the FCC is required to consult the states (section 271(d)(2)(B)). At that time, the FCC can request the states to validate that an RBOC's terms and conditions are appropriate.

3. **The FCC Should Not Require Sub-loop Unbundling.**

The FCC tentatively concludes that further unbundling of the local loop should be required and requests comment on which elements of the sub-loop are technically feasible to unbundle. NPRM, ¶97. In California, parties have suggested that sub-loop unbundling may be problematic. Requiring this level of unbundling could be especially difficult and costly for smaller local exchange carriers because of the level of detail and costs associated with unbundling a network.

D. **Pricing Issues**

1. **Rates for Interconnection and Network Elements Can Be Determined by Means Other Than Traditional Cost of Service Regulation.**

The FCC tentatively concludes that language in the Act precludes states from setting rates by using traditional cost of service regulation, with its detailed examination of historical carrier costs and rate bases. NPRM, ¶123. The FCC goes on to state that the statute appears to contemplate the use of other forms of cost-based price regulation, such as price cap regulation or setting the prices based on forward-looking cost methodology, such as long-run incremental cost ("LRIC"), that does not involve the use of an embedded rate base.

The CPUC has been using price cap regulation for its two largest LECs, Pacific Bell and GTEC, for the past seven years. Last year, the CPUC began regulating one of California's mid-sized LECs, Citizens Telecommunications Company, under price cap regulation. These three companies serve more than 97% of the access lines in California. The CPUC has also identified TSLRIC as the standard for the cost studies being prepared in the unbundling proceeding. It is important to note that both Pacific and GTEC have submitted TSLRIC studies that use current expenses. These studies assume the use of least cost technologies that are currently deployed, and at current investment cost, together with the most current actual operating expenses.

2. The CPUC Is In the Process of Setting Prices for Unbundled Elements.

The FCC states, "[t]he California Public Utilities Commission has set prices for unbundled elements based on a forward-looking calculation of TSLRIC, which excludes shared and common costs." NPRM, ¶127. The CPUC has not yet set its prices for the unbundled elements. That issue will be the subject of hearings this summer with a final order due in December 1996. The CPUC has adopted TSLRIC as the standard for developing the costs of the unbundled elements. (See Attachment 3 on Consensus Costing Principles.) In the hearings this summer, the CPUC will determine the unbundled network elements and what level of shared and common costs should be included in the price of each unbundled element.

3. Proxy Models Should Not Be Used to Determine Rates for Interconnection and Unbundled Elements.

The FCC requests comment on the use of a proxy model for constraining rates that states may set for interconnection and unbundled network elements. NPRM, ¶137. The CPUC believes that this use of a proxy model may not be appropriate. The CPUC has argued before the FCC that a proxy model will be useful to target the universal service fund and intends to adopt a proxy model for its intrastate universal service fund. In this NPRM, the FCC proposes to use a proxy model for an entirely different purpose. The proxy models before the Commission may be used to develop the costs of basic service, but would not be useful to develop ceiling rates for unbundled elements for several reasons. First, the proxy models California is familiar with are designed to estimate the cost of residential basic service, whereas it is likely that there will be demand for unbundled facilities for business. Business loops may tend to be clustered closer to the central office, resulting in shorter average loop lengths. Second, the proxy models do not take into account the cost of providing a loop to another carrier or the avoided costs from not retailing residential services to consumers. Third, some proxy models use geographic areas, such as census block groups, which do not correspond to LEC exchange areas. This may be more suitable for assessing universal service costs for a portable subsidy system than for assessing the cost for the LEC to provide facilities.

4. Congress Did Not Intend "Nondiscriminatory" in the 1996 Act to Prohibit All Price Discrimination.

The Commission seeks comment on the meaning of the term "nondiscriminatory" in the 1996 Act compared with the phrase "unreasonable discrimination" in the 1934 Act. It also seeks comment on whether Congress' use of the term "nondiscriminatory" should be interpreted to prohibit all price discrimination, including measures considered lawful under 202(a). NPRM, ¶155, 156.

The CPUC believes that although the language of the two Acts may appear to vary, there is no inconsistency in Congress' intent. In fact, a complete reading of section 251(c)(4) illustrates how similar the language really is. The rulemaking states that section 251(c)(4) requires that carriers making resale available, not impose "discriminatory conditions or limitations on resale." The section actually reads, "...**unreasonable** or discriminatory conditions or limitations on...resale...." It is apparent that Congress intended "reasonableness" to factor into resale agreements under the 1996 Act in the same way it prohibited "unreasonable discrimination" in the 1934 Act.

The rules of statutory construction require that words be given their plain meaning. The American Heritage Dictionary of the American Language defines the root word "discriminate" as: 1) To make a clear distinction; distinguish; differentiate; 2) To act on the basis of prejudice. The 1934 Act applies the first definition. The 1996 Act, by using "unreasonable" in conjunction with "discriminatory" allows a distinction or differentiation, but it must be reasonable. See, §251(c)(4). The 1996 Act appears to have applied the secondary definition in that the use of "discriminatory" prohibits acts based on prejudice or favoritism. When read as a whole, the logical conclusion is that the intent of the 1996 language is to ensure that resale price decisions are just and reasonable, and do not unfairly advantage or disadvantage one party over another. Regardless of the definition applied, both Acts intend the same result.

As the rulemaking points out, sections of the Act seem to be at odds with one another. When attempting to ascertain the meaning behind specific language, it is useful to rely on the enumerated goals of the Act. One specific goal is promoting competition, and the concept of negotiated interconnection agreements furthers this goal. If a narrow interpretation of the term "nondiscriminatory" is contrary to the section 252(i) terms of negotiated agreements, then by inference it is contrary to the Act's goal of promoting competition and should be broadened.[16]

The Commission also seeks comment on whether sections 251 and 252 can be interpreted as allowing carriers to charge different rates to parties not similarly situated, specifically, when carriers incur different costs to provide service. NPRM, ¶156. The CPUC believes it is possible to charge different prices without discriminating. In the example given, the different costs of providing the service are the basis for the different rates, and are therefore an acceptable reason for distinguishing among parties. Discrimination is not an issue given these circumstances. For this reason and those previously

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16. Section 252(i) requires incumbent LECs to "make available any interconnection, service, or network element provided under an agreement...to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

stated, the CPUC urges the Commission to interpret sections 251 and 252 as prohibiting only unjust or unreasonable discrimination. Such an interpretation eliminates ambiguities, reflects the intent of the Act and furthers its goals.

5. **The FCC Should Not Require Existing Agreements To be Resubmitted to States.**

The FCC seeks comment on whether sections 252(e)(1) and 252(a)(1) require parties that have existing agreements to submit those agreements to state commissions for approval. NPRM, ¶48. The CPUC believes that this interpretation could be problematic. Requiring parties to resubmit existing agreements for review would be unduly burdensome for both state commissions and parties that have negotiated the agreements. In states like California, which have many telecommunications carriers that have multiple agreements, this review process would deter the CPUC staff from focusing on implementing the overriding goal of the Act, namely promoting competition in telecommunications markets. The CPUC has already reviewed these agreements with an eye to developing competition. Additionally, under the FCC interpretation, parties that have negotiated agreements in good faith may have to renegotiate agreements. The FCC should not require parties that have existing agreements to resubmit those agreements to state commissions for approval.

E. **Interexchange Services**

In paragraph 161, the FCC tentatively concludes that the obligation to provide interconnection pursuant to section

251(c)(2) does not apply to telecommunications carriers requesting such interconnection for the purpose of originating or terminating interexchange traffic. The CPUC agrees and reached this same conclusion in its interconnection order, D.95-12-056.

F. Commercial Mobile Radio Services

California filed both opening and reply comments in CC Docket No. 95-185 which explain how CMRS providers are considered in the context of California's competitive local exchange rules. The CPUC will not reiterate comments made in that proceeding, but will address some of the new issues regarding LEC/CMRS interconnection (NPRM, ¶¶166-169). Section 3(44) of the Act appears to exclude CMRS providers from the definition of local exchange carrier on the basis of technology used, while including them in the definition of "telecommunications carriers." The Act does not appear to constrain the CPUC or the Commission from pursuing ongoing reexaminations of LEC/CMRS interconnection.

G. Resale Obligations of Incumbent LECs

Recognizing the importance of resale in opening the local exchange markets, the 1996 Act establishes the obligations of incumbent LECs and provides guidance for pricing wholesale services. In section 251(c)(4), the 1996 Act specifies the duties regarding resale by requiring incumbent local exchange carriers:

> "A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

B) to not prohibit and to not impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers."

1. Incumbent LECs Only Are Required to Provide Services at Wholesale Rates.

The FCC requests comment on the view that only incumbent LECs are required to provide services at wholesale rates to requesting telecommunications carriers. NPRM, ¶174. The CPUC believes that is clearly the intent of the Act. Section 251(b) first sets out the obligations of all Local Exchange Carriers, but then goes on to delineate in subsection (c) the additional obligations of incumbents. In California, the CPUC has determined that resale is solely a requirement of incumbents. Facilities-based LECs will undoubtedly enter the wholesale market as their networks expand and as they see the wholesale market as a viable business opportunity. Only the incumbent LECs, with their monopoly market power, must be ordered to set wholesale rates for their services.

2. Resale Restrictions Should Be Imposed Narrowly.

The FCC also seeks comment on whether incumbent LECs should be allowed to impose resale restrictions on their wholesale products. NPRM, ¶175. The CPUC agrees with the FCC that these restrictions should be imposed in only a narrow range of cases.

In all cases, the burden of proving the need for the restriction should rest with the incumbent LEC. One area where restrictions are warranted is in the treatment of a single service which can be sold to either other carriers or to end users. For example, a HICAP line could be sold to a carrier as part of its own network or for resale to one of its customers. The Act is clear that only the purchases sold to other carriers be subject to an avoided cost discount. The CPUC suggests that in the instant case, the discount would apply only to dedicated lines between end user locations.

Discounted services, such as toll discount plans, which are a part of the incumbents' range of retail services mentioned in section 251(c)(4)(A), should be available for resale to the same class of qualifying customers. It would be inappropriate if the new entrant could resell business toll plans with call threshold volume requirements to low volume residential customers. Resellers should have the same ability to market to high volume toll users as the incumbent LEC, and if they can only resell from the standard toll schedule, they would not be able to do so. Short term promotional offerings, however, (such as waiver of installation charges for 90 days) need not be available for resale.

Section 251(c)(4)(B) of the Act supports the ban on resale of residential access lines to business customers. In California, flat rate residential service would be an attractive opportunity for business customers who can obtain only measured service under current retail tariff terms and conditions. Additionally, discounted telephone service for low-income residential customers should only be resold to eligible low-income residential customers.

The FCC also requests comment on varying resale policies among states that would competitively disadvantage new entrants. NPRM, ¶177. The CPUC believes that the FCC allowance of varying resale policies among the states would not disadvantage the new entrants and is consistent with the Act. It is no more burdensome than service options that vary by state today; local calling areas vary, as do free call allowances, to name a few. The bottom line is that new entrants are competing with the specific service offerings of an incumbent in a particular market. One size does not fit all. Additionally, the 1996 Act is specific in stating that state commissions may develop resale policies that are consistent with the Commission's regulations. State policies need not be exactly the same to be consistent.

3. The FCC Should Clarify the Specific Intent Behind 251(c)(4).

The FCC should clarify the specific intent behind 251(c)(4). While California has adopted an interim approach for determining avoided retail costs, the CPUC's order indicated that the model it used provided only a rough estimate of avoided retailing costs. This is an area where a consistent approach or a menu of acceptable approaches may be appropriate.

The FCC could issue guidelines which states could apply to determine avoided costs. The Act is clear in section 252(d) that states shall determine the wholesale rates. The CPUC finds the tops-down approach adopted in California to be appropriate as an interim solution, but the long term solution may need to be more refined, at least for those states which are able to develop their own methodology. Ideally, costs should be determined on a service-by-service basis, using a bottoms-up approach. This approach would likely result in different avoided costs for different services. In California, parties have stated that retailing costs vary between services. The issue of whether avoided costs should include a share of general overhead assigned to such costs should be clarified. In recommending the use of a net avoided cost methodology, Illinois raises a relevant point. The concept of net avoided costs appears to provide an accurate estimate of actual costs avoided by the incumbent in wholesale provisioning of the service. The CPUC is currently considering this issue.

The FCC requests comment on whether it should set a uniform set of presumptions that states could apply in the absence of quantifications of avoided costs by LECs. NPRM, ¶181. In California, the CPUC is developing the cost studies it will use in setting final wholesale rates. The cost studies have been submitted and are going through significant scrutiny by competitors and by CPUC staff. For states that have cost studies, those studies present a more refined approach than the "presumptions" concept put forth by the Commission. The NPRM indicates that the presumptions would only be used in those circumstances where cost studies are not available. We concur with that approach.

The FCC also states that it could identify specific accounts or portions of accounts in the Commission's Uniform System of

Accounts ("USOA"). CPUC staff reviewed the USOA accounts in calculating California's interim avoided cost discount and found that even at the subaccount level, retail avoided costs are not always easy to differentiate. A certain amount of subjectivity enters into the process when allocating portions of subaccounts to retail vs. wholesale. The FCC should provide guidance on how to treat specific subaccounts.

The presumptive approach only provides a single discount which is then applied to all services and therefore does not take service-by-service marketing costs into account. As part of its unbundling proceeding, the CPUC has asked the incumbent LECs to identify their avoided costs, consistent with their TSLRIC cost studies. The CPUC believes that setting the correct price signals is sufficiently important to warrant this additional step. Evidentiary hearings are scheduled for July 1996. The CPUC has prioritized these cost studies to focus first on the larger markets such as residential and business access, local usage, zone usage and intraLATA toll. Smaller markets will be addressed at a later date.

California recognizes that a bottoms-up cost study approach is resource intensive for both the regulator and the LEC. While California is in a position to use a bottoms-up cost study approach to setting wholesale rates for its two largest LEC's, California recognizes that a similar approach may not be appropriate for smaller jurisdictions and smaller LECs. California supports the FCC's proposed presumptions as an adequate solution where cost studies are not available.

IV. OBLIGATIONS IMPOSED ON LOCAL EXCHANGE CARRIERS

A. The FCC Must Clarify the Boundaries the Act Imposes On Reciprocal Compensation for Transport and Termination of Traffic So That States Can Develop Appropriate Terms and Conditions.

The Act establishes a structure for compensation for transport and call termination in the competitive local exchange market. The Act accomplishes this in two ways: (1) by imposing reciprocal call termination compensation obligations on LEC's (Section 251(b)(5)); and (2) by establishing pricing standards which states must apply when considering compensation for call termination. (Section 252(d)(2)) The pricing standards in section 252(d)(2) provide states with the following direction for call transport and termination: (1) compensation must provide for mutual and reciprocal recovery of costs; (2) prices must be based on a reasonable approximation of costs; (3) reciprocal compensation can be accomplished through offsetting obligations, aka "bill and keep"; and (4) neither the states nor the Commission are given any additional authority to determine costs. By directing states to follow these pricing guidelines, the Act appears to be giving states the primary rate setting authority over call transport and termination.

The Act directs the FCC to expand on the interconnection obligations and the general pricing guidelines with generic rules, and to intervene if states fail to establish pro-competitive transport and termination provisions. California believes that these generic rules should allow for a range of alternative solutions. The Act establishes standards, but the meaning of these standards must be clarified by the Commission so that the states can expeditiously implement specific arrangements. The questions regarding call termination and transport the FCC raises in the NPRM should allow the Commission to develop the generic rules mandated by the Act.

The CPUC has addressed reciprocal compensation for call termination in the context of its local competition proceeding (OIR/I 95-04-043/044), by adopting an interim bill and keep approach prior to the enactment of the Act.[17] These rules (a) establish interconnection obligations of LECs and CLCs, and are (b) consistent with section 251. Consequently, California believes that it should be able to continue to enforce them as provided for in section 251(d)(3)(C). The CPUC believes that the general approach it has taken toward interconnection in its rules, structured negotiations, and the specific bill and keep preferred outcome for call termination are consistent with the Act. California believes that the success of its approach vindicates the Act's reliance on negotiation, albeit with the threat of intervention.

California would like to clarify the arrangements it has established for compensation for call termination alluded to in <u>NPRM</u>, ¶227-229, 240. California has established bill and keep as a preferred outcome for negotiated interconnection arrangements. Bill and keep has been adopted on an interim basis, with the interim period scheduled to last one year, concluding January 1,

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17. Decisions (D.) 95-07-054 and D.95-12-056.

1997. California has not yet determined that interconnecting firms will pay incumbent LEC's an explicit charge for call termination at the conclusion of the interim period. California plans to review call termination compensation arrangements in order to establish a permanent arrangement. California will consider a number of options, including: (1) continued bill and keep, (2) a cost based reciprocal rate for call termination, and (3) a band approach where bill and keep is used when traffic is in balance and a reciprocal rate when traffic is out of balance beyond a specified margin.

California believes that Section 251(d) of the Act allows states to adopt consistent pricing standards for network elements and the transport and termination of traffic in order to avoid inefficiencies and arbitrage opportunities. NPRM, ¶233. The Act's frequent, explicit directives to provide nondiscriminatory interconnection should apply between serving arrangements as well as within serving arrangements. Nothing in the Act is intended to force states into influencing a carrier's decision about the type of arrangement the carrier chooses by mandating artificial price signals. The variant language in Sections 251(d)(1) and 251(d)(2) addresses specific pricing concerns for unbundled network elements and call termination rates, but does not preclude states from applying sensible, consistent pricing standards.

California believes that generic nationwide pricing floors or ceilings conflict with the express language of the act and are potentially problematic. The Act's pricing standards direct "a State commission" not to consider terms and conditions for reciprocal compensation achieved through negotiation to be just and reasonable unless specific conditions are met. (Section 252(B)(2)) The Act does not appear to contemplate a federal rate setting role. Additionally, the generic floors and ceilings are highly problematic. A ceiling for call termination rates based on some preexisting switching-based price, such as switched access rates or some portion of switched access rates, would have to take into account the wide variance in rates among states. For example, California has eliminated its intrastate carrier common line charge (CCLC) and established relatively low intrastate switched access rates, while other jurisdictions still maintain a CCL and higher switched access rates. As the NPRM notes, floors for call termination may conflict with bill and keep arrangements.

The Commission seeks comment on Section 252(d)(2)(B)(ii)'s admonition that the Act should not be interpreted "to authorize" rate regulation proceedings which seek to establish "with particularity the additional costs of transporting and terminating calls." NPRM, ¶234. California believes that this provision is not intended to prohibit States which currently have the authority to determine the cost of transport and termination from gathering such information, but rather to prevent the Act from being used to overturn existing prohibitions against such activity. The Act does not prohibit proceedings to establish costs for transport and termination. Section 252(d)(2)(B)(ii) simply indicates that the Act should not be viewed as adding to existing authority.

It is California's understanding that some jurisdictions have allowed mid-sized LEC's the option of using proxies based on larger LEC's costs to price call termination and unbundled network elements, rather than require them to conduct potentially resource intensive cost studies. The Act is intended to preserve this practical accommodation for mid-sized LEC's. California also believes that this provision may be intended to discourage protracted, potentially obstructive pricing proceedings which may be gamed to deter entry. For the same reason, section 252(2)(A)(ii) indicates that reciprocal compensation should be based on a "reasonable approximation" of costs.

The Commission asks for comment on whether it should establish guidelines for states concerning symmetrical compensation for transport and termination of calls. NPRM, ¶235-238. California's experience suggests that such a limitation would hamper the marketplace. Although California's interim preferred outcome for call termination rates is a form of symmetrical compensation, some parties have chosen to deviate from this outcome and have negotiated asymmetrical rates. California believes that this example demonstrates the virtue of a flexible approach in a fluid marketplace. Under a preferred outcome approach a regulatory body could encourage symmetry, but allow for asymmetrical rates if parties negotiate such an arrangement. As the NPRM notes, there may be circumstances when a new entrant offering a premium service should be allowed to charge a higher rate. NPRM, ¶238.

As discussed previously, California has adopted bill and keep on an interim basis and will consider bill and keep as a long term option for compensation for terminating local traffic, along with other possible arrangements. NPRM, ¶ 240-243. In determining a long term arrangement for call termination charges, the CPUC plans to consider many of the issues raised by the NPRM, namely the incremental cost of terminating traffic and traffic balance. NPRM, ¶241. In order to monitor traffic flows, the CPUC has ordered incumbent LECs and new entrants to measure traffic and exchange results to be audited by an independent party.[18]

The CPUC strongly disagrees with the contention some parties have made that the Act prohibits the Commission and states from imposing bill and keep. NPRM, ¶243. California believes that the the Act clearly authorizes states to impose bill and keep in their capacity as arbitrators, and that bill and keep should remain an option for states. (Section 252(2)(B)(i)) When traffic exchange is in balance, bill and keep may be the most efficient and least administratively burdensome option. California believes that the Michigan approach cited by the NPRM whereby carriers pay reciprocal charges when traffic volumes are significantly out of balance, yet waive reciprocal charges when traffic volumes are roughly in balance, is also consistent with the Act.

California certainly believes that states should be allowed to impose interim call termination compensation arrangements. NPRM, ¶244. An interim approach allows immediate entry while

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18. CPUC Decision 95-12-056, p. 28.